

October 21, 2016

**VIA ECFS**

***EX PARTE NOTICE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re:** *In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106

Dear Ms. Dortch,

On October 19, 2016, Ivana Kriznic of Orange Business Services US, Inc., Gegi Leeger of XO Communications, Linda Cicco and Thomas Whitehead of BT, and Angie Kronenberg and the undersigned counsel of INCOMPAS (collectively, the “INCOMPAS representatives”) met with Claude Aiken of Commissioner Clyburn’s Office. Nick Alexander of Level 3 participated by phone. On October 20, 2016, Ivana Kriznic of Orange Business Services US, Inc., Gegi Leeger of XO Communications, Thomas Whitehead of BT, and Angie Kronenberg and the undersigned counsel of INCOMPAS met with Amy Bender of Commissioner O’Rielly’s Office. Nick Alexander of Level 3 and Linda Cicco of BT participated by phone. On October 20, 2016, Ivana Kriznic of Orange Business Services US, Inc., Gegi Leeger of XO Communications, Thomas Whitehead of BT, and Angie Kronenberg and the undersigned counsel of INCOMPAS met with Gigi Sohn and Stephanie Weiner of the Office of the Chairman with Matthew DelNero and Lisa Hone of the Wireline Competition Bureau.. Nick Alexander of Level 3 and Linda Cicco of BT participated by phone. During these meetings, the INCOMPAS representatives discussed the Commission’s broadband privacy rulemaking in the above-referenced proceeding.

Throughout this proceeding, INCOMPAS has suggested that in order to maximize harmonization between the privacy rules for broadband Internet access service (“BIAS”) and traditional telephone service and interconnected VoIP service, the Commission should provide carriers with an exemption for the provision of service to enterprise customers from subpart U of the Commission’s rules.<sup>1</sup> The INCOMPAS representatives reiterated their support for this proposal and noted that an enterprise customer exemption would further align the treatment of BIAS and services sold to business customers because BIAS is, by definition, a mass-market service. INCOMPAS’s members believe they can address their customers’ privacy-related needs

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<sup>1</sup> See Letter from CTIA, INCOMPAS, Level 3 Communications, LLC, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 16-106, at 1 (filed Sep. 23, 2016).

as well as the Commission's core privacy principles of transparency, choice, and security for their enterprise customers. The INCOMPAS representatives explained that carriers serving enterprise customers would benefit from the flexibility such an approach would offer.

We explained that carriers currently provide their services to enterprise customers via a variety of methods. For instance, some providers have negotiated contracts for enterprise customers, while others use standard order forms, and the Commission's Order should provide some flexibility in satisfying any contractual requirements the Commission might be considering for the enterprise customer exemption, including by reference to a URL setting forth the carrier's policies in detail. Additionally, the INCOMPAS representatives indicated that rather than require providers to make dedicated account representatives available to enterprise customers, the proposed rules need only ensure that contractual arrangements between carriers and enterprise customers cover the particular process by which these businesses can address their privacy and data security questions.

The INCOMPAS representatives discussed the impact that the classification of call detail information ("CDI") as sensitive information subject to opt-in consent could have on our members' first party marketing efforts and their ability to offer enterprise customers innovative and pro-customer options. Carriers are currently permitted to utilize CDI for direct sales and marketing across categories of service subject to opt-out consent. INCOMPAS members serving enterprise customers have found that these businesses rely on their carriers' ability to analyze this information and recommend improved services and cheaper plans. Given the fundamentally different privacy interests of enterprise customers and their expectations with respect to carrier use of CDI, we recommended that enterprise customer CDI is more appropriately classified as non-sensitive information subject to opt-out consent.

We also asked the Commission to consider an implementation period of 12 to 18 months which would provide carriers with the time necessary to make adjustments and preparations for rule changes. While carriers already have sufficient privacy practices in place, the scope of the changes contemplated by the Commission would require these providers to make significant revisions to their policies and internal operations. The companies affected by the proposed rule change will need adequate time to identify and flow down these requirements to third party vendors contractually, modify and reconfigure IT systems, conduct employee training, prepare remediation plans, and perform essential internal audits in order to identify any gaps. Carriers serving enterprise customers will also need sufficient time to incorporate any new requirements into their existing contractual arrangements. Furthermore, an implementation period of this duration would still be aggressive when compared to other jurisdictions currently implementing new data privacy regulations. Several INCOMPAS members are currently involved in implementing the European Union's General Data Protection Regulation where companies have been given 24 months to comply.

Finally, the INCOMPAS representatives commended the Commission for embracing an approach that takes into consideration the sensitivity of information being shared for its opt-in customer consent regime, but explained that the inclusion of web browsing history and app usage history could severely limit the ability of our members to innovate and market new products and services. With respect to the inclusion of web browsing and app history usage as categories of

sensitive information, we explained that the Commission could take a more tailored approach that would see the inclusion of web-browsing for the FTC's five categories of sensitive information, or require opt-in consent for marketing based on search terms. Several of our members already participate in this approach, known as "white listing" in which websites are categorized for marketing purposes based on the determination on the front end that they are non-sensitive (e.g., URLs that meet the criteria of "spots lover" or "furniture shopper"). This means that URLs with sensitive information do not get filtered through to be part of the advertising program. We explained that our members have more incentive to be conservative with their website categorization process so as not to risk losing customers. We asked the Commission to consider this tailored approach as well as a narrower definition of sensitive information proposed by the association in a September 16<sup>th</sup> *ex parte* letter.<sup>2</sup>

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced docket. Please do not hesitate to contact me if you have questions about this submission.

Respectfully submitted,

/s/ Christopher L. Shipley

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cc: Claude Aiken  
Amy Bender  
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<sup>2</sup> See Letter from Christopher L. Shipley, INCOMPAS, to Marlene H. Dortch, FCC, WC Docket No. 16-106, at 2 (filed Sep. 16, 2013) (defining "sensitive customer proprietary network information" as individually identifiable children's, financial account, health, and *precise* geolocation information).